

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

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CDInskeep

date: **MAY 21, 2002**

to: Communications, Technology and Media, Team 1304 (LMSB)  
ATTN: Margie C. Maxwell, Manager

Stop 4340SANW

from: Associate Area Counsel  
(Natural Resources:Austin)

Stop 2000AUS

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subject: [REDACTED] Corporation and Subsidiaries  
Consent to Extend Statute of Limitations

**Earliest Statute Expires:** [REDACTED]

This memorandum responds to your request regarding the proper parties to execute a Form 872 consent to extend the statute of limitations for assessment, as detailed below. The request involves the parent company of a group of corporations which filed a consolidated return for the taxable year ending December 31, [REDACTED]. Confusion exists because of mergers and acquisitions involving the entity and its parent corporations, as well as name changes for the entity and its parents. This memorandum should not be cited as precedent. Although we are providing this advice to you based on our analysis of the applicable law and the specific facts of this situation, a copy of this memorandum will be forwarded to the Office of Chief Counsel for review and comment under the procedures established by the Chief Counsel for the post-review of significant advice in non-docketed cases. This review may result in changes to the advice provided in this memorandum.

**ISSUE**

Who is the proper party to execute an agreement to extend the statute of limitations for assessment concerning a consolidated return filed by [REDACTED] Corporation (EIN: [REDACTED]) as the common parent of an affiliated group ([REDACTED] Corporation and Subsidiaries) for the taxable year at issue? [REDACTED] Corporation and its subsequent common parents were involved in a series of mergers, acquisitions and name changes.

**FACTS**

Your group is examining a number of related returns involving corporations that have undergone numerous mergers, acquisitions and name changes affecting the entities which filed the returns. Due to the impending expiration of the periods for assessment for some of the returns, it is necessary to extend those periods. Because of the name changes, mergers and acquisitions involving the entities, you have asked us to assist in determining the correct entity and the proper name to be placed on the Form 872.

The return in question was for the taxable year ending December 31, [REDACTED], for an affiliated group of corporations, [REDACTED] Corporation and Subsidiaries. The employer identification number ("EIN") for the parent company, [REDACTED] Corporation, was [REDACTED].

On [REDACTED], [REDACTED] Corporation was acquired by [REDACTED] Inc. (formerly known as [REDACTED] Corporation) by merging a wholly-owned subsidiary of [REDACTED] Inc. into [REDACTED] Corporation, with [REDACTED] Corporation surviving.

On [REDACTED], [REDACTED] Corporation merged into [REDACTED] Corporation, a subsidiary of [REDACTED] Inc. (f/k/a [REDACTED] Corporation). This merger was identified as a reorganization under I.R.C. §§ 368(a)(1)(A) and (D). [REDACTED] Corporation changed its name to [REDACTED] Inc. and kept EIN [REDACTED].

On [REDACTED], [REDACTED] Inc. acquired [REDACTED] Inc. in a reverse triangular merger. [REDACTED] Inc. and its subsidiary corporations (including [REDACTED] Inc.) have become members of the [REDACTED] Inc. group of affiliated corporations, and they file consolidated returns with that group. [REDACTED] Inc. continues in existence and has retained the EIN: [REDACTED].

**DISCUSSION**

Treas. Reg. § 1.1502-77(a) generally provides that the common parent, for all purposes (except for special situations not applicable to this Taxpayer), shall be the sole agent for each subsidiary in the group and is duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Except for the special situations not present in this case, no subsidiary shall have authority to act for or to represent itself in any such matter. In the case of a

current subsidiary that previously filed a consolidated return as a common parent, the referenced provision is interpreted to allow the current subsidiary to act as the agent concerning the year for which it previously filed as the common parent. A "common parent" is a corporation that files income tax returns on a consolidated basis for an affiliated group of corporations. See I.R.C. § 1504(a); Rev. Proc. 99-9, 1999-1 C.B. 278.

Treas. Reg. § 1.1502-77(c) provides that an agreement entered into by the common parent, extending the time within which an assessment may be made in respect of the tax for a consolidated return year, shall be applicable (1) to each corporation which was a member of the group during any part of such taxable year, and (2) to each corporation for which the income was included in the consolidated return for such taxable year, notwithstanding that the tax liability of any such corporation is subsequently computed on the basis of a separate return under Treas. Reg. § 1.1502-75.

Treas. Reg. § 1.1502-77T provides alternative agents for the affiliated group in a situation in which the corporation that is the common parent of the group ceases to be the common parent. This section applies to statutory notices and waivers of the statute of limitations for taxable years for which the due date (without extensions) of the consolidated return is after September 7, 1988; thus, it applies to the taxable year in issue.

Treas. Reg. § 1.1502-77T(a)(4) provides for alternative agents to sign a waiver of the statute of limitations and to be issued a notice of deficiency. The corporations which may be alternative agents include:

(i) The common parent of the group for all or any part of the year to which the waiver applies;

(ii) A successor to the former common parent in a transaction to which section 381(a) applies;

(iii) The agent designated by the group under Treas. Reg. § 1.1502-77(d); or

(iv) If the group remains in existence under Treas. Reg. § 1.1502-75(d)(2) or (3), the common parent of the group at the time the waiver is given.

The common parent of the affiliated group of corporations is no longer in existence, but it was merged into a successor corporation in a reorganization identified by the Taxpayer under I.R.C. §§ 368(a)(1)(A) and (D). A reorganization under either of these provisions is a transaction to which I.R.C. § 381(a)

applies, as contemplated by Treas. Reg. § 1.1502-77T(a)(4)(ii), thereby qualifying the successor corporation as an appropriate alternative agent for the former common parent's group.

The Taxpayer has presented no evidence that any other agent was designated by the group, or by the former common parent before it terminated. Consequently, [REDACTED] Inc., the successor corporation to the former common parent, is the appropriate entity to act as agent for the [REDACTED] Corporation and Subsidiaries group of affiliated corporations for the taxable year ending December 31, [REDACTED].

#### RECOMMENDATIONS

The common parent of the affiliated group which filed the consolidated return in question is no longer in existence. There is no evidence that the common parent or the group designated an agent for the group under Treas. Reg. § 1.1502-77(d). There is a successor to the common parent, as considered in Treas. Reg. § 1.1502-77T(a)(4)(ii). In this case, the successor corporation is the proper party to sign the Form 872 statute extension. Based on the facts as presented and our foregoing analysis, we recommend that the entity name for the Taxpayer on the Form 872 be styled as follows:

[REDACTED] Inc. (EIN: [REDACTED]), formerly known as [REDACTED] Corporation (EIN: [REDACTED]), as successor in interest and alternative agent for [REDACTED] Corporation and Subsidiaries\* (EIN: [REDACTED])

\* This is with respect to the consolidated tax liability of [REDACTED] Corporation and Subsidiaries for the taxable year ending December 31, [REDACTED].

We recommend securing the signature of an authorized current officer of [REDACTED] Inc. on the signature block of the Form 872 and noting the following on the signature block:

[name of current officer]

[title of officer]

[REDACTED], Inc.

We also recommend placing the EIN of [REDACTED] Corporation in the box on the Form 872 for the Taxpayer Identification Number.

In addition, we recommend that you comply with the notice requirements contained in the recently enacted provisions of I.R.C. § 6501(c)(4)(B), applicable to requests for extensions of the period of limitations which are made after December 1, 1999. These statutory requirements include notifying the Taxpayer that the Taxpayer may (1) refuse to extend the period of limitations, or (2) limit the extension to particular issues or to a particular period of time.

Because of the apparent volatility of this industry and the entities involved, we recommend that you verify that the entity identified as the proper party to execute the Form 872 is still in existence, continues to use the same EIN and has retained the same name.

Also, note that IRM 121.2.22.3 requires use of Letter 907(DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929(DO) to return the signed Form 872 to the Taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the Taxpayer, it should be promptly signed and dated in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 121.2.22.3. You will also need to update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. (See IRM 4531.2 and 4534). This includes Form 5348. In the event a Form 872 becomes lost or separated from the file, these other documents would become invaluable to assist in establishing that the agreement had been executed.

We hope that this response satisfactorily addresses your inquiry. If you have any questions or comments, please contact the undersigned attorney at (512) 499-5324.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

MARION S. FRIEDMAN  
Associate Area Counsel  
(Large & Mid-Size Business)

By: \_\_\_\_\_  
CARL D. INSKEEP  
Senior Attorney (LMSB)